

REGISTER OF FOREIGN OWNERSHIP – GUIDANCE NOTE FOR NSW SOLICITORS

On 1 July 2023, the Australian Taxation Office (ATO) launched a new [Register of Foreign Ownership of Australian Assets](#) (the **Register**). The Register is an updated and online version of the former register administered by the ATO on behalf of the [Foreign Investment Review Board \(FIRB\)](#).

Foreign investors are required to register an expanded list of Australian assets on the Register. ‘Foreign investors’ are ‘foreign persons’ and can include foreign governments and these entities are defined in the *Foreign Acquisitions and Takeovers Act 1975 (Cth)*.

However, guidance in identifying foreign investors can be found at: [Key concepts | Foreign investment in Australia](#) and [Foreign investment terms and definitions | Australian Taxation Office \(ato.gov.au\)](#).

In order for foreign investors to access the Register, they must obtain a MyGovID and register with the Register; see here: [Online services for foreign investors | Australian Taxation Office \(ato.gov.au\)](#).

Foreign investors are able to appoint an authorised representative (**Authorised Representative**). An Authorised Representative may be a solicitor. This guidance has been prepared for NSW solicitors.

Things to be aware of:

The Law Society of NSW understands that an Authorised Representative will be able to see all of the foreign investor’s activity on the Register – *including for those assets where the solicitor has not been instructed by the foreign investor*.

What solicitors should do:

- familiarise themselves with the new requirements of the Register and how it works
- determine whether they should act as an Authorised Representative having particular regard to their obligation of confidentiality.
- if so and if instructed to act as an Authorised Representative:
 - confirm who within their firm will be the nominated individual(s) to access the Register and if so on behalf of which client(s)
 - confirm the firm’s processes for appointment as an Authorised Representative.

- notify and obtain written consent from the client that the solicitor will be able to see all assets and compliance activities recorded by that client on the Register.
- confirm that the solicitor’s instructions apply only in respect of specific asset(s) and compliance obligations on the Register only and have approval to proceed on that basis.
- confirm to the client that if the solicitor sees or views other asset(s) or compliance obligations on the Register in respect of the client for which the solicitor is not instructed that the solicitor reinforces their obligation not to breach their obligation of confidentiality to the client.

Retainers

Retainers also should be reviewed when instructed to act as an Authorised Representative to ensure matters of confidentiality and conflicts of interest are addressed.

If the client is to be responsible for registration, confirm this in writing with the client. Alternatively, if you are to be responsible for registration, then this should be confirmed in writing with the client. This is to ensure that in either event the limits of your retainer are clear. Consideration also should be given to any implications this may have for professional indemnity insurance obligations and, if necessary, contact Lawcover for guidance.

Resources

The ATO and FIRB have a number of resources available for foreign investors and their Authorised Representatives that can be accessed as below:

- [Register of Foreign Ownership of Australian Assets | Australian Taxation Office \(ato.gov.au\)](#)
- [Online services for foreign investors | Australian Taxation Office \(ato.gov.au\)](#)
- [Principal authority | Relationship Authorisation Manager](#)
- [Notification of actions | Foreign investment in Australia](#)
- [The Treasury \(FIRB\) website includes guidance information](#) on the rules concerning Australia’s foreign investment framework and how those rules are applied, including Guidance Notes: see [Overview | Foreign investment in Australia](#)

For questions on solicitors’ obligations to their clients, please contact the Law Society’s Professional Support Unit.

